ROMANCE IN REAL ESTATE

Strange Story of Title to Parcel of Land Located in Boston.

TRUTH THAT MUCH EXCEEDS FICTION

Greed of Heirs for Legacy Starts Strange Circuit of Law Suits that Eventually Right the Wrong.

In presenting this interesting account of the wanderings of a fee simple title from one claimant to another we feel that a word is necessary from the donor lest the reader may feel that we are placing too much confidence in the credulity of our friends.

We cannot testify as to the facts of Mr. Crocker's remarkable story, but Mr. Crocker, now deceased, was a well known attorney and trustee in Boston and his standing as a lawyer as well as the authorities cited in the story, are sufficient evidence of its veracity.

We are indebted to Mr. Crocker's brother, Hon. Geo. G. Crocker, the transit commissioner of Boston, for the original copy as it was published by the Massachusetts Title Insurance company and the American Law Review in October, 1875.

History of a Title.

Of the locality of the parcel of real estate, the history of the title of which it is proposed to relate, it may be sufficient to say that it lies in Boston within the limits of the territory ravaged by the great fire of November 9 and 10, 1872. In 1800 this parcel of land was in the undisturbed possession of Mr. William Ingalls, who referred his title to it to the will of his father, Mr. Thomas Ingalls, who died in 1830. Mr. Ingalls, the elder, had been a very wealthy citizen of Boston; and when he made his will, a few years before his death, he owned this one parcel of real estate, worth about $50,000 and possessed in addition, personal property to the amount of between $200,000 and $300,000. By his will he specifically devised this parcel of land to his wife, for life and upon her death to his only child, the William Ingalls before mentioned, in fee, to whom, after directing his executor to pay to two nephews, William and Arthur Jones, the sum of $25,000 each, he gave also the large residue of his property. After the date of his will, however, Mr. Thomas Ingalls engaged in some unfortunate speculations and upon the settlement of his estate the personal property proved to be barely sufficient for the payment of his debts and the nephews got no portion of their legacies. The real estate, however, afforded to the widow a comfortable income, which enabled her during her life to support herself in a respectable manner. Upon her death in 1845 the son entered into possession of the estate, which had gradually increased in value; and he had been enjoying for fifteen years a handsome income derived therefrom, when he was one day surprised to hear that the two cousins, whom his father had benevolently remembered in his will, had advanced a claim that this real estate should be sold by his father's executor and the proceeds applied to the payment of their legacies.

Surprise to the Holders.

This claim, now first made thirty years after the death of his father, was of course a great surprise to Mr. Ingalls. He had entertained the popular idea that twenty years' possession effectually cut off all claims. Here, however, were parties, after thirty years undisputed possession by his mother and himself, setting up in 1850 a claim arising out of the will of his father, that will having been proved in 1830. Nor had Mr. Ingalls ever dreamed that the legacies given to his cousins could in any way have precedence over the specific devise of the parcel of real estate to himself. It was, as a matter of common sense, so clear that his father had intended by his first will to provide for his wife and son and then to make a generous gift out of the residue of his estate to his nephews, that during the thirty years that had elapsed since his death it had never occurred to any one to suggest any other disposal of the property than that which had actually been made. Upon consulting with counsel, however, Mr. Ingalls learned that although the time within which most actions might be brought was limited to a specified number of years, there was no such limitation affecting the bringing of an action to recover a legacy. See Mass. Gen. St. c. 97, 22; Kent against Dunham, 106 Mass. 586, 591; Brooks against Lynde, 7 Allen, 64, 66. He also learned that as his father's will gave him after his mother's death the same estate that he would have taken by inheritance had there been no will, the law looked upon the devise to him as void and deemed him to have taken the estate by descent. What he had supposed to be a specific devise of the estate to him then was a void devise, or no devise at all; and his parcel of real estate, being in the eye of the law simply a part of an undevised residue, was of course liable to be sold for the payment of the legacies contained in his father's will. It was assets which the executor was bound to apply to that purpose. This exact point had been determined in the then recent case of Ellis against Page, 7 Cush, 161; and Mr. Ingalls was finally compelled to see the estate, the undisputed possession of which he had enjoyed for so many years, sold at auction by the executor of his father's will for $135,000, not quite enough to pay the legacies to his cousins, which legacies, with interest from the expiration of one year after the testator's death, amounted at the time of the sale in 1862 to $142,000. The Messrs. Jones themselves purchased the estate at the sale, deeming the purchase a good investment of the amount of their legacies and Mr. Ingalls instituted a system of stricter economy in his domestic expenses and pondered much on the uncertainty of the law and the mutability of human affairs.

Another Claimant in Sight.

By one of those curious coincidences which so often occur, Messrs. William and Arthur Jones had scarcely begun to enjoy the increased supply of pocket money afforded them by the rents of their newly acquired property, when they each received one morning a summons to appear before justices of the superior court, "to answer unto John Rogers in a writ of entry," the premises described in the writ being their newly acquired estate.

The Messrs. Jones were at first rather startled by this unexpected proceeding; but as they had, when they received their deed from Mr. Ingalls' executor, taken the precaution to have the title to their estate examined by a conveyancer, who had reported that he had carried his examination as far back as the beginning of the century and had found the title perfectly clear and correct, they took courage and waited for further developments. It was not long, however, before the facts upon which the writ of entry had been founded were made known. It appeared that for some time prior to 1750 the estate had belonged to one John Buttolph, who died in that year, leaving a will in which he devised the estate "to my brother William." Thomas Buttolph had held the estate until 1775, when he died, leaving an only daughter, Mary, at that time the wife of Timothy Rogers. Mrs. Rogers held the estate until 1790, when she died, leaving two sons and a daughter. This estate she devised to her daughter, who subsequently, in 1800, conveyed it to Mr. Thomas Ingalls, before mentioned. Peter Rogers, the eldest son of Mrs. Rogers was a non-compos, but lived until the year 1854, when he died at the age of 75. He left no children, having never been married. John Rogers, the demandant in the writ of entry, was the oldest son of John Rogers, the second son of Mrs. Mary Rogers, and the basis of the title set up by him was substantially as follows:

Descent of Estate Tail.

He claimed that under the decision in Hayward against Howe, 12 Gray 49, the will of John Buttolph had given to Thomas Buttolph an estate tail, the law construing the intention of the testator to have been that the estate should belong to Thomas Buttolph and to his issue as long as such issue should exist, but that upon the failure of such issue, whenever such failure might occur, whether at the death of Thomas or at any subsequent time, the estate should go to William Buttolph. It had also been decided in Corbin vs. Healy, 20 Pick. 514, 516, that an estate tail does not descend in Massachusetts, like other real estate, to all the children of the deceased owner, in equal shares, but according to the old English rule, exclusively to the oldest son, if any, and to the daughters only in default of any son, and it had been further decided in Hall v. Priest, 6 Gray, 18, 24, that an estate tail cannot be devised or in any way affected by the will of a tenant in tail. Mr. John Rogers claimed then that the estate tail given by the will of John Buttolph to Thomas Buttolph had descended at the death of Thomas to his only child, Mary Rogers; that at her death, instead of passing, as had been supposed at the time, by virtue of her will, to her daughter, that will had been wholly without effect upon the estate, which had, in fact, descended to her oldest son, Peter Rogers. Peter Rogers had indeed been disseized in 1800, if not before by the acts of his sister in taking possession of and conveying away the estate; but as he was a non-compos during the whole of his long life, the statute of limitations did not begin to run against him and his heir in tail, namely John Rogers, the oldest son of his then deceased brother, John, was allowed by Mass. Gen. st. c. 145, par. 5, ten years after his uncle Peter's death, within which to bring his action. As these ten years did not expire until 1864, this action, brought in 1863, was seasonably commended, and it was prosecuted with success, judgment in his favor having been recovered by John Rogers in 1865.

Work of a Bright Lawyer.

The case of Rogers v. Jones was naturally a subject of remark among the legal profession; and it happened to occur to one of the younger members of that profession that it would be well to improve some of his idle moments by studying up the facts of this case in the Suffolk Registries of Deeds and of Probate. Curiosity prompted this gentleman to extend his investigation beyond the facts directly involved in the case and to trace the title of Mr. John Buttolph back to an earlier date. He found that Mr. Buttolph had purchased the estate in 1730 of one Hosea Johnson, to whom it had been conveyed in 1710 by Benjamin Parsons. The deed from Parsons to Johnson, however, conveyed the land to Johnson simply, without any mention of his "heirs;" and the young lawyer, having recently read the case of Buffum v. Hutchinson, 1 Allen, 58, perceived that Johnson took under this deed only a life estate in the granted premises and that at his death the premises reverted to Parsons or his heirs. The young lawyer, being of an enterprising spirit, thought it would be well to follow out the investigation suggested by his discovery. He found, to his surprise, that Hosea Johnson did not die until 1786, the estate having in fact been purchased by him for a residence when he was twenty-one years of age and about to be married. He had lived upon it for twenty years, but had then moved his residence to another part of the city and sold the estate, as we have seen to Mr. Buttolph. When Mr. Johnson died in 1786 at the age of ninety-seven, it chanced that the sole party entitled to the revision as heir of Benjamin Parsons, was a young woman, his granddaughter, aged eighteen, and just married. This young lady and her husband lived, as sometimes happens, to celebrate their diamond wedding in 1861, but died during that year. As she had been under the legal disability of coverture from the time when her right of entry upon the estate as heir of Benjamin Parsons, first accrued, at the termination of Johnson's life estate, the provision of the statute of limitations, before cited, gave her heirs ten years after her death, within which to bring their action.

Parsons' Heirs Come In.

These heirs proved to be three or four people of small means residing in remote parts of the United States. What arrangements the young lawyer made with these parties and also with a Mr. John Smith, a speculating moneyed man of Boston, who was supposed to have furnished certain necessary funds, he was wise enough to keep carefully to himself. Suffice it to say that in 1869 an action was brought by the heirs of Benjamin Parsons to recover from Rogers the land which he had just recovered from William and Arthur Jones. In this action the plaintiffs were successful, and they had no sooner been put in formal possession of the estate than they conveyed it, now worth a couple of hundred thousand dollars, to the aforesaid Mr. John Smith, who was popularly supposed to have obtained in this case, as he usually did in all financial operations in which he was concerned, the lion's share of the plunder. The Parsons heirs probably realized very little from the results of the suit; but the young lawyer obtained sufficient to establish him as a brilliant speculator in suburban lands, second mortgages and patent rights. Mr. Smith had but a short time been in possession of his new estate when the great fire of November, 1872, swept over it. He was, however, a most energetic citizen and the ruins were not cold before he was at work rebuilding. He bought an adjoining lot in order to increase the size of his estate, the whole of which was soon covered by an elegant block, conspicuous on the front of which may be seen his initials "J. S." cut in the stone.

Ingalls Again Active.

While the estate which had once belonged to Mr. Ingalls was passing from one person to another in the bewildering manner we have endeavored to describe, Mr. Ingalls had himself, for a time, looked on in amazement. It finally occurred to him, however, that he would go to the root of this matter of the title. He employed a skillful conveyancer to trace that title back, if possible to the Book of Possessions. The result of this investigation was that the parcel which he had himself owned, together with the additional parcel bought and added to it by Smith, had in 1643 or 1644, when the Book of Possessions was compiled, constituted one parcel, which was then the "possession" of one "Madid Engle," who subsequently in 1660, under the name of "Mauditt Engles," conveyed it to John Vergoose, on the express condition that no building should ever be erected on a certain portion of the rear of the premises conveyed. Now, it had so happened that this portion of these premises had never been built upon before the great fire, but Mr. Smith's new buildings had covered the whole of the forbidden ground. It was evident, then, that the condition had occurred so recently that the right to enforce a forfeiture was not barred by the statute and could not be deemed to have been waived by any neglect or delay, and that consequently, under the decision in Gray against Blanchard, 8 Pick. 284, a forfeiture of the estate for breach of this condition could now be enforced if the true parties entitled by descent and by residuary devises under the original "Engle" or "Engles" could only be found. It occurred to Mr. Ingalls, however, that this name "Engles" bore a certain similarity in sound to his own, and as he had heard that during the early years after the settlement of this country great changes in the spelling of names had been brought about, he instituted an inquiry into his own genealogy, the result of which was, in brief, that he found he could prove himself to be the identical person entitled, as heir of Madid Engle, to enforce, for breach of the condition in the old deed of 1660, the forfeiture of the estate now in the possession of John Smith.

Smith Loses Heart and Property.

When Mr. Smith heard of these facts he felt that a retributive Nemises was pursuing him. He lost the usual pluck and bulldog determination with which he had been accustomed to fight at the law all claims against him, whether just or unjust. He consulted the spirits, and they rapped out the answer that he must make the best settlement he could with Mr. Ingalls or he would infallibly lose all his fine estate—not only that part which Mr. Ingalls had originally held and which he had obtained for almost nothing from the heirs of Benjamin Parsons—but also the adjoining parcel for which he had paid its full value, together with the elegant building which he had erected at a cost exceeding the whole value of the land. Mr. Smith believed in the spirits; they had made a lucky guess once in answering an inquiry from him; he was getting old; he had worked like a steam engine during a long and busy life, but now his health and his digestion were giving out, and when the news of Mr. Ingalls' claim reached his ears he became in a word demoralized. He instructed his lawyer to make the best settlement of the matter that he could and a settlement was soon effected by which the whole of Mr. Smith's parcel of land in the burnt district was conveyed to Mr. Ingalls, who gave back to Mr. Smith a mortgage for the whole amount which the latter had expended in the erection of his building, together with what he had paid for the parcel added by him to the original lot. Mr. Smith, not liking to have anything to remind him of his one unfortunate speculation, soon sold and assigned this mortgage to the Massachusetts Hospital Life Insurance company, and as the well known counsel of that institution has now examined and passed the title, we may presume that there are in it no more flaws remaining to be discovered.

Ingalls' New View of Law.

In conclusion we may say that Mr. William Ingalls, after having been for some ten years a reviler of the law, especially of that portion of it which relates to the title to real estate, is now inclined to look more complacently upon it, being again in undisturbed and undisputed possession of his old estate, now worth much more than before, and in the receipt therefrom of an ample income which will enable him to pass the remainder of his days in comfort, if not in luxury. But though Mr. Ingalls is content with the final result of the history of his title, those lawyers who are known as "conveyancers" are by no means happy when they contemplate that history, for it has tended to impress upon them how full of pitfalls is the ground upon which they are accustomed to tread, and how extensive is the knowledge and how great the care required of all who travel over it, and they now look more disgusted than ever, when, as so often happens, they are requested to "just step over" to the registry and "look down" a title, and are informed that the title is a very simple one and will only take a few minutes, and that So-and-so, "a very careful man," did it in less than half an hour last year, and found it all right, and that his charge was $5.

Moral.

It would be presumptious on our part to suggest the moral of this tale even to the simplest mind. It is far better to merely impress it upon you. In Omaha today many titles to real estate are changing hands and the abstract and its examination are not given the attention it deserves by the buyer and seller. With them it is a question of economy and they even frequently feel that it is an expensive and almost unnecessary detail of the transaction. The parcel of real estate in Mr. Crocker's story increased in value during the story from $50,000 to over $250,000. With such possibilities is it not worth while to exercise the greatest care in selecting the abstracter who is to make the abstract of title and to see that it is examined carefully? The time is fast approaching when owners of real estate will rely not only upon a careful examination of the titles, but will have their titles insured, as is the custom in the east.

DIAMOND RING STILL HELD

Valuable Article Which Survives Stage Art Awaits Owner, Who Denies It.

A fine diamond ring is waiting its owner in the Orpheum theater box office, and meanwhile Manager Reiter is wondering how large a damage suit a certain woman will bring against his company. Reiter thinks the ring is worth not more than $150, but he knows how values expand in court. The management has done its best to induce the woman to take possession of her property but she won't.

She parted with it Friday night during the performance in response to a request from Hermann, the slight-of-hand man, for three rings from the audience. The woman sat in the second row. Hermann took the rings, apparently pounded them to pieces in a pestle, loaded a gun with the pieces and fired them into a box from which he extracted the three rings as good as when taken from the audience.

But the woman in the second row didn't think so. She insisted it was not her ring and wouldn't take it. No amount of persuasion would induce her to do so. Rather than stop the performance Hermann had to keep the ring and turn it over to the house management. The woman did not give her name or make any other explanation of her conduct.

WOMAN IS CALLED A WITCH

Party to Neighborhood Wrangle Casts Strange Spell Over Her Adversary.

"I am afraid of that woman. She is a witch. She throws poison over the fence to my chickens and has said she would burn the house down."

This emphatic declaration was made on the witness stand in county court Saturday by Mrs. John Craig in the case in which Mrs. Hannah Baker sought to secure a peace warrant against Mr. Caig. Mrs. Craig was testifying for her husband and she declared she believed Mrs. Baker had supernatural powers and she did not want anything to do with her.

The trouble started Sunday, April 1, when Mrs. Baker says Craig threw a lot of bricks at her. The Craigs came back with counter charges against Mrs. Baker, and the testimony on both sides was very emphatic. It developed the Craigs have built a high board fence between their place and Mrs. Baker's since the trouble. Mrs. Baker is a small, wrinkled German woman, and is Craig's next door neighbor at Tenth and Paul streets. Judge Leslie discharged the defendant.